has a statutory right to protection, but the weight of authority in this country is otherwise. *Knisley* v. *Pratt*, 148 N. Y. 372; *contra*, *Davis Coal Co* v. *Polland*, 158 Ind. 607. And the present case is supported by the only two decisions squarely in point. *Frost* v. *Josselyn*, 180 Mass. 389; *Scanlon* v. *Widgen*, 156 Mass. 462. The case might also have been rested on another ground. The statute involved was designed to protect persons properly on the highway, but not trespassers in adjoining fields who had come to see its provisions broken. There was, therefore, no breach of any duty to the plaintiff. See, in general, 20 HARV. L. REV. 14.

VENDOR AND PURCHASER — RIGHTS AND LIABILITIES — FORFEITURE BY FAILURE TO PAY INSTALMENTS. — The defendant contracted to sell the plaintiff a piece of land, to be paid for partly in cash and partly in monthly instalments. Time was expressly made of the essence, and in case of failure to make any payment as due, all money paid over was to be retained as liquidated damages. It was further provided that in case a suit then pending between the defendant and a third party as to the land in question should terminate in favor of the third party, all payments made by the plaintiff should be returned. Upon the plaintiff's failing to pay three monthly instalments, the defendant declared a forfeiture. Later, the third party won in his suit with the defendant, and the plaintiff brought action for his money. *Held*, that the plaintiff is not entitled to repayment of the instalments paid over. *Jennings* v. *Dexter Horton & Co.*, 86 Pac. Rep. 576 (Wash.).

The failure to pay the instalments was a material breach, which gave the defendant a right to repudiate. *Axford* v. *Thomas*, 160 Pa. St. 8. Where time is made of the essence, payments made by the vendor before forfeiture cannot be recovered. *Maloy* v. *Muir*, 62 Neb. 80; *contra*, *Gilbreth* v. *Grewell*, 13 Ind. 484. Further, forfeiture nullifies the contract and destroys all liability of either party under it. See *Moore* v. *Smith*, 24 Ill. 512. No subsequent happenings can affect the rights of the parties. Nor can any obligation of the defendant to refund the payments in case of an unsuccessful termination of his litigation after the default of the plaintiff, be implied from the contract, which contemplated no such contingency. The case, therefore, seems correct, but it illustrates the hard results that follow from the application of the prevalent rules governing forfeiture in this country.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

POWER OF EQUITY TO RESTRAIN FRAUDULENT ELECTION OFFICIALS. — The case of People *ex rel.* Miller *v.* Tool, decided by the Supreme Court of Colorado in 1904, but only recently reported,[1] held that the state, upon the relation of the Attorney-General, the Governor, and the chairman of the Republican State Committee, could by injunction restrain certain election officials from committing illegal and fraudulent acts, by which they had conspired to steal the forthcoming state election. The defendants' unsuccessful argument against the granting of the injunction rested upon three broad grounds: first, that there was an adequate remedy at law; second, that the question was political and not judicial; third, that equity was asked to restrain a crime. The case has met with so much criticism, from lawyers as well as from partisans, that Mr. Henry J. Hersey, who was of counsel for the petitioners, has attempted in a recent address to defend it. *The Tool Case.*[2]

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[1] 86 Pac. Rep. 224 (Col., Sup. Ct.).

[2] An address by Henry J. Hersey, of Denver, Colorado, before the Colorado Bar Association at its annual meeting, Sept. 27 and 28, 1906.

Mr. Hersey directs his arguments to the contentions of the defendant as stated. First, he maintains that there is no adequate remedy at law. If such a remedy exists, there was obviously no ground for equitable interference, for it is axiomatic that equity never interferes unless the law has failed to provide an adequate remedy. *Quo warranto*, which was suggested, is available only to determine the title to an office or franchise;[1] *mandamus* will be allowed only for the actual breach of a ministerial duty;[2] indictment or information would probably not result in a conviction, if at all, until long after the damage to the public had been inflicted. Thus Mr. Hersey seems correct in maintaining that there was no adequate legal remedy.

The address next deals with the contention of the defendant that equity had no jurisdiction because the subject-matter was political and not judicial. The facts involved in the case had never, as the court in its opinion admits, previously been presented for adjudication, and the defendants insisted that this was because it had always been thought plain that a remedy was outside the field of equity, and indeed of the judiciary as a whole. But, as is properly pointed out,[3] the absence of previous judicial sanction is not conclusive, inasmuch as the granting of an injunction is, within very broad limits, discretional, and inasmuch as the shifting conditions of modern life may enlarge even these broad limits. But neither Mr. Hersey nor the court lay any stress on the undoubted fact that where the questions involved have been so long before the courts as those relating to the right of unhampered suffrage, such absence of judicial utterance is a most pregnant circumstance. But what of the broad question raised by this branch of the case? It is often said that courts whether of law or of equity are precluded from deciding any political questions. This seems to mean, however, merely that the judiciary must leave untouched any matter entrusted by the United States Constitution to either of the other two co-ordinate departments.[4] The protection of the right of suffrage sought in the Tool case is obviously not political in this sense, any more than is the power to naturalize an alien.[5] The books abound in cases where the courts have protected the right of suffrage. But assuming, as we safely may, that we have here a state of facts which, though involving political considerations, is yet judicial in its essence, it is argued that the court of law, and not equity, should take command. In short, whereas before, the case was said not to be within equity's power at all, here, though within, it is said to be inexpedient for equity to intervene, because it is asked to concern itself with political, and not, as usual, with civil or property rights.[6] As Mr. Justice Holmes put it recently, "The traditional limits of proceedings in equity have not embraced a remedy for political wrongs."[7] It may be said in passing that the court, and Mr. Hersey with it, might have been saved the embarrassment of deciding this broad question, for there is very weighty authority for holding that the right to vote is civil rather than political.[8] But assuming with Mr. Hersey that it is a political question, shall we agree with him that it is a proper field for equity's activity? The case, in answering this question in the affirmative, unquestionably breaks new ground, though Mr. Hersey collects some authorities which he believes involve similar principles. If we once assume that a wrong exists, for which there is no adequate legal remedy, it is hard to see any reason why equity should necessarily decline to make use of its remedy, which is so essentially a matter of discretion. Even if this case is followed, however, it will probably be true that the chancellor will be reluctant to interfere unless the facts are, as here, very strong.[9] The decision may, then, mark the first venture

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[1] High, Extr. Leg. Rem., 3 ed., § 603.
[2] State *ex rel.* Price *v.* Carney, 3 Kan. 88.
[3] Pp. 16–20.
[4] See State *ex rel.* Lamb *v.* Cunningham, 83 Wis. 90, 134, 135.
[5] 2 Cyc. 113.
[6] *Cf.* 1 Pom., Eq. Jurisp., 3 ed., § 131.
[7] Holmes, J., in Giles *v.* Harris, 189 U. S. 475, at p. 486.
[8] 1 Story, Comm. on U. S. Const., 5 ed., § 580. See also Anderson *v.* Baker, 23 Md. 531.
[9] For a good discussion of equity's attitude in such matters, see 1 Spelling, Injunc., 2 ed., § 630.

of equity in the political field. Although it must be recognized to be an innovation, it would be a narrow mind which would, for that reason alone, condemn an apparently beneficial exercise of power.[1]

The real difficulty of the case, however, is in regard to the third contention of the defendant, which Mr. Hersey is rather inclined to make light of. The question here is, should the court of equity have kept its hands off because the act enjoined was also a crime? Though, as we have seen, criminal proceedings would at best have afforded the people of Colorado but an inadequate redress, it by no means follows that equity will therefore interfere. Equity's inclination is, to be sure, to right every wrong unprovided for elsewhere. But whereas under our second head no good reason could be adduced why equity should not interfere, here such a reason does exist, — namely, the law's hostility to equity's enjoining any act which is a crime, owing, perhaps, to the historical reverence for the right to trial by jury. It is true that in certain limited fields, such as nuisances, which involve property rights and which equity was enjoining before the passage of our Constitution, the law tolerates equity's concurrent jurisdiction. Indeed, if a new form of nuisance arose, equity might be expected to act. But as interference with the right to vote is so far removed from the type of crime which equity has dealt with, and as it involves no property right whatsoever, the impropriety of equity's taking control seems clear. On this one point, then, the case cannot be supported.

But Mr. Hersey argues further in support of the case: "The state may, when suing in its sovereign capacity, pursue any remedy it chooses, though a private suitor might be held bound to some one remedy."[2] This statement, however, seems incorrect. It is an enunciation of the English doctrine of prerogative, which, so far as transplanted to this country at all, has been vested in the people speaking through the legislature and not through the courts. The very case on which Mr. Hersey principally relies[3] shows that the doctrine is there confined to the proposition that when the people through their legislature pass a statute, for example the Statute of Limitations, they are not thereby to be presumed to legislate the state out of its former powers unless express words are used. But, as the United States Supreme Court has pointed out, general rules of procedure — and under this head the present case seems to fail — apply equally to citizen and state.[4] Mr. Hersey's doctrine would seem to go to the length of saying that the state could prosecute for murder in equity. It proves too much. There is, then, nothing in the prerogative idea to upset the conclusion previously reached that, though Mr. Hersey is correct in his contention that equity may interfere by injunction where only a political right is involved, yet he is wrong in considering immaterial the added fact that the act enjoined would be a crime.[5]

UNAUTHORIZED AGENTS' LIABILITY ON NEGOTIABLE INSTRUMENTS. — Two elementary problems in statutory interpretation, matters of logic rather than of

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[1] For cases the language of which would support the position here taken, see State *ex rel.* Cook *v.* Houser, 122 Wis. 534, and cases cited; Boren *v.* Smith, 47 Ill. 482. For language leading to the opposite result, see Fletcher *v.* Tuttle, 151 Ill. 41; Shoemaker *v.* City of Des Moines, 105 N. W. Rep. 520 (Ia.).

[2] P. 7.

[3] Dollar Savings Bank *v.* United States, 19 Wall. (U. S.) 227. *Cf.* People *v.* Herkimer, 4 Cow. (N. Y.) 345; and an excellent note to the case in 15 Am. Dec. 380.

[4] Green *v.* United States, 9 Wall. (U. S.) 655. See also State *v.* Kroner, 2 Tex. 492.

[5] A later decision of the Colorado Supreme Court not yet reported (People *ex rel.* Graves *v.* Johnson, July 2, 1906) holds, by an apparently forced construction of the state constitution, that no inferior court, but only the Supreme Court, may take jurisdiction in a case of this kind. This decision may be indicative of a desire to get away from the disastrous effects which it was generally felt would follow the earlier case.